CONNECTICUT CONFERENCE OF MUNICIPALITIES

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TESTIMONY

of the

CONNECTICUT CONFERENCE OF MUNICIPALITIES

to the

JUDICIARY COMMITTEE

April 4, 2011

The Connecticut Conference of Municipalities (CCM) is Connecticut's statewide association of towns and cities and the voice of local government - your partners in governing Connecticut. Our members represent over 90% of Connecticut's population. We appreciate the opportunity to testify on bills of interest to towns and cities.

There are several bills before you today that would increase municipal liability exposure during the most devastating municipal fiscal crisis since the Great Depression. Towns and cities have made uncomfortable budget cuts and are girding for additional cuts. These include layoffs of police officers, firefighters, road personnel and teachers.

In Connecticut's central cities, the situation is increasing grave and dire. Deep cuts in services and massive layoffs have occurred in these communities – with promised cuts and layoffs to come. Municipalities must still provide the services residents depend on for education, public safety and infrastructure maintenance, regardless of the economy.

The proposals before you represent attempts to get at the perceived "deep pockets" of towns and cities.

With towns and cities about to fall over a fiscal cliff, we urge you to protect residential and business property taxpayers and take no action on these bills. Now is the time for mandates relief, not for imposing new unfunded state mandates!

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Increasing Municipal Liability Exposure

S.B. 1231, "An Act Concerning Notice of An Action Regarding A Defective Highway, Bridge, Sidewalk, Road or Railing"

CCM opposes this unfunded state mandate.

S.B. 1231 would increase municipal liability exposure by extending the defective highway notice period to 180 days *and* start the clock ticking after completion of a police investigation. There is no reason why the notice period should be extended except, of course, because the plaintiff's counsel failed to file a timely notice.

The bill mixes up two principles. It seems to be based on the assumption that the notice should only be issued after the potential plaintiff has determined that a cause of action exists. That's incorrect. The point of the notice requirement is to give municipalities the chance to do a timely investigation into whether a defect actually existed and whether it was the sole proximate cause of the accident. For self-insured municipalities, it also allows them to start reserving for the claim if they think there may be potential exposure to a significant liability. If the driver thinks a defective highway contributed to the accident, he/she is going to be aware of the alleged defect at the time the accident happens. The driver doesn't need to determine whether a cause of action exists until the two-year statute of limitations for actually bringing the cause of action is winding down. Extending the *notice period* until a police report is completed has nothing to do with that. Instead, it may hamper municipalities' ability to determine whether there were other contributing factors involved. Furthermore, extending the notice period would push municipalities into subsequent budgetary cycles so that their ability to reserve for the claim is delayed.

There are a number of obvious practical problems with this. In the case of a fatal accident, the police investigation may be completed, but not closed for months if the Medical Examiner's Office is backlogged with its reports. What if the town is serviced by a resident state trooper? In those cases, the bill effectively puts control over the duration of the notice period for a claim against the municipality into the hands of a state agency which has no reason to act promptly. What if there is no investigation because the accident was not reported to the police? (Countless defective highway claims involve sidewalk trip-and-falls or minor property damage incidents where the matter is never reported to the police.)

CCM urges you to take a stand for property taxpayers by taking no action on this bill.

S.B 1232, "An Act Concerning Municipal Immunity for the Negligent Acts or Omissions of Employees, Officers and Agents"

CCM opposes this bill.

S.B. 1232 would limit governmental immunity to discretionary acts made at a planning or decision-making level as opposed to an operational level.

This bill raises several questions: Isn't it somewhat definitional that discretion is exercised at a "decision-making level"? Isn't it also fairly clear that "operational level" and "decision-making level" are not mutually exclusive? As a strictly statistical matter, aren't most discretionary decisions made at an "operational level"? When a police officer is aiming a weapon at someone, they're both operational *and* engaging in a decision-making process. Also, when a Director of Public Works decides when he's going to start snow plowing or salting operations, that's both an operational matter and a decision-making process.

S.B. 1232 is a badly disguised effort to kill the great majority of cases in which governmental immunity currently applies on a daily basis.

H.B. 6555, "An Act Concerning Civil Actions Against the State and Municipalities for the Sexual Assault of Children"

CCM opposes this bill.

H.B. 6555 would allow a family to bring an action against a municipality for the sexual assault, sexual abuse or sexual exploitation of a minor by any municipal employee, officer or agent. In addition, the bill proposes that any sort of special defense of governmental immunity would be stripped away.

This is in direct contravention of the provisions of CGS Sect. 52,557n that provides that a municipality cannot be held liable for the intentional or criminal acts of its employees. It is antithetical to centuries of common law dealing with the concepts of respondeat superior and ultra vires acts. It changes every single city employee (or agent – how far does this go? Someone selling ice cream at the beach?) into a ticking financial time bomb. Thus, regardless of how careful the screening process, a municipality can be held directly liable if one of its employees goes off track and commits a criminal act against a child (regardless of whether or not the town had any prior notice or warning).

CCM urges you to take no action on this bill.

CCM urges the Committee to protect the interest of towns and cities – and their property taxpayers – and take no action on the aforementioned bills.

Other Proposals

S.B. 1230, "An Act Concerning Traffic Stop Information"

While CCM appreciates the intent behind this proposal, it would impose costly administrative burdens on towns and cities during a period when there are layoffs of police officers.

CCM is unaware of any widespread problems with the current system, whereby municipalities adhere to local written policies governing traffic stops.

CCM urges the Committee to include a funding source to reimburse municipalities for costs associated with S.B. 1230.

H.B. 6641, "An Act Concerning the Use of Credit Reports in Employment Decisions"

CCM urges the Committee to amend this bill, if it is to proceed.

H.B. 6641 would prohibit employers from obtaining credit reports on applicants, except under certain conditions.

CCM is concerned that existing exceptions do not seem to include municipal employees whose positions require them to handle cash (such as tax collection staff or treasury/accounting staff) or people who hold positions of public trust, such as police officers or firefighters. The bill should be amended to include exceptions in those instances.

H.B. 6557, "An Act Concerning Liability for the Recreational Use of Lands"

CCM appreciates the intent behind this proposal – to provide some liability relief to municipalities for certain cases involving injuries as a result of recreational activities on certain lands made available as open space. However, the proposal does not go far enough in providing needed relief. CCM supports S.B. 43, which the Planning and Development Committee favorably reported. S.B. 43 overturns *Conway v. Wilton*.

S.B. 43 would codify municipalities under the protections of the Recreational Land Use Act (CGS 52-557f et. seq.), which provides partial immunity to owners of recreational land made available to the public without charge. That is, they are liable only for injuries occurring on such land when there is a "willful or malicious failure to guard or warn against a dangerous condition, use, structure or activity."

Such protections provided by S.B. 43 should be provided to municipalities for the following reasons:

- As a result of *Conway v. Wilton*, some municipalities have closed, stopped construction on, halted acquisition of, or restricted the use of recreational facilities;

- Even with the partial immunity offered by the Recreational Land use Act, municipalities have spent significant dollars and made significant efforts to make recreational areas safe for their citizens;

- Many other states provide some form of immunity from liability to municipal and other public landowners when they make their land available without charge for recreational use;

- Some recreational activities are inherently risky. Municipalities and other public agencies cannot prevent injuries to people who undertake them, and municipalities should not be held responsible for those injuries;

- Failure to add legal protections to municipalities costs hard-pressed property taxpayers money and services; and

- The recent outcome off a recreational land use lawsuit against the Metropolitan District Commission has increased the fears of local officials that litigious individuals will take advantage of "perceived" deep-pockets and exploit their voluntary use of public open space lands.

Thank you.

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If you have any questions, please call Ron Thomas at rthomas@ccm-ct.org or (203) 498-3000.